IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

M.P.I.D. APPEAL NO. 890 OF 2004

...

Mrs.Sujata Shantaraj Shetty ...Appellant

v/s.

The State of Maharashtra ...Respondent

...

Mr.Girish Kulkarni with Mr.Satish Kakane, Advocate for the Appellant.

Mr.A.M. Shringarpure, APP for the State.

...

CORAM: V.M.KANADE, J.

DATED: 20TH OCTOBER,2004

P.C.:

1. The Appellant is challenging the judgment and order passed by the Special Judge in M.P.I.D. Special Case No.6 of 2002 dated 29th March, 2004, whereby the Misc. Application No.683 of 2002 preferred by accused No.2 seeking discharge on the grounds mentioned in her application was dismissed.

2. The appellant and her husband were charged under Section 420 read with 120B of the Indian Penal Code for having collected a fund of Rs.2,64,97,500/- fraudulently from the investors. The Appellant and other accused were also charged under Section 406 read with 120B of I.P.C. for committing criminal breach of trust by dishonestly misappropriating the money which was fradulently collected and were also charged under Section 3 of the Maharashtra Protection of Interest of Depositors Act, 1999. An application was preferred by the Appellant herein before the Special Court, M.P.I.D. on the ground that there was no material against the Appellant showing her involvement in the said offence. It is submitted that the case of the prosecution against the Appellant did not fall within the four corners of Section 3 of the M.P.I.D. Act as none of the witnesses has alleged that either the Appellant was

managing the affairs of the Company or was in any way involved in collecting the said amount. It was submitted that so far as the flat which was purchased by the Appellant it was purchased out of her own earning and after taking loan from the Bank. It was submitted that, therefore the Appellant may be discharged.

3. The trial Court came to the conclusion that prima facie there was material to show that there was evidence available with the prosecution to proceed against the present Appellant, and the said application was therefore dismissed. Against the said order an appeal has been preferred under Section 12 of the M.P.I.D. Act.

4. The learned Counsel appearing on behalf of the Appellant has strenuously urged that there was no evidence or material available with the prosecution to prove that the Appellant was in any way involved in the commission of the said offence. He submitted that there was no material to prove that the Appellant was in overall control of the day to day business of the company and therefore was not liable to be convicted merely because she was the Director

of the Company. In support of the said submission, he relied on the judgment of the Supreme Court reported in **AIR 1981 SC 872 in the case of State of Karnataka Appellant v/s. Pratap Chand and others, Respondents.** He also relied on the judgment of the Bombay High Court reported in Company Cases, Vol.59 page 356 in the case of H. Nanjundiah v/s. V.Govindan, Registrar of Companies, Maharashtra, and another. He also relied on the judgment of the Delhi High Court reported in Company Cases, Vol.71, page 509 in the case of S.P.Punj and ors. v/s. Registrar of Companies.

5. The learned APP appearing on behalf of the State submitted that there was sufficient material with the prosecution to prove that the Appellant was directly concerned and was in charge of the running the company and further there was evidence to show that she had conspired with the other accused in collecting the amounts from the investors fradulently and desirably.

6. M.P.I.D.Act was passed to protect the interest of small investors. This Act is a Special Act and has an overriding effect over the other statutes.

Section 14 of the Act lays down that the Act shall have effect notwithstanding anything in other provisions in other laws which were in force. Financial establishment has been defined in Section 2(b) of the Act. Section 3 is the penal section which makes every person, who is responsible for the management of or conducting the business or affairs of such financial establishment, with for conviction. The prosecution has relied on statements of number of witnesses, who have in term stated that all the accused including the Appellant had conspired to collect the amount and in furtherance of the said intention of cheating and committing criminal breach of trust has misappropriated the amount collected from them. The present Appellant has purchased a flat. She has not explained from where she has collected the balance amount of Rs.6,00,000/- in purchasing the said flat. The Special Judge, in my view, has rightly held that there is sufficient material to proceed against the Appellant and has, therefore, rejected the application for discharge of the Appellant. In my view, there is no merit in the submission made by the learned Counsel appearing on behalf of the Appellant. The submission that there is no material to show that the Appellant was in

charge of the company also cannot be accepted. The judgment of the Supreme Court relied upon by the Counsel for the Appellant also will not be of any assistance to the Appellant, as in the said case the evidence was already adduced and after appreciating the evidence the Supreme Court came to the conclusion that the accused therein was not in charge of running the affairs of the company. In the present case the evidence is yet to be adduced. However, there is ample material to show that the Appellant also was involved in collecting the said amount. The ratio of the judgments relied upon by the learned Counsel appearing on behalf of the Appellant will not be applicable to the facts of the present case. The order of the trial court is confirmed. Appeal is accordingly dismissed.

...